

[FR Doc. 95-3015 Filed 2-6-95; 8:45 am]

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**Notice of Cases Filed; Week of November 7 Through November 11, 1994**

During the week of November 7 through November 11, 1994 the appeals and applications for exception or other relief listed in the appendix to this

notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of

notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 30, 1995.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS**

[Week of November 7 Through November 11, 1994]

Date	Name and location of applicant	Case No.	Type of submission
11/7/94 .....	E.O. Smelser, Oklahoma City, Oklahoma .....	VFA-0011	Appeal of an Information Request Denial/Reconsideration. If granted: The October 4, 1994 Freedom of Information Appeal Decision and Order (Case Number LFA-0420) issued by the Office of Hearings and Appeals would be rescinded, and E.O. Smelser would receive access to remaining NRIS database information.
11/7/94 .....	Texaco/Major Oils, San Francisco, California	RR321-170	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The October 4, 1994 Decision and Order (Case Number RR321-165) issued to Major Oils would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
11/8/94 .....	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO-0011	Request for Hearings under 10 C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
11/8/94 .....	Gulf/Ryder Energy Distribution, Hardin, Kentucky.	RR300-261	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The August 9, 1991 Decision and Order (Case Nos. RF300-11185 and RF300-17936) issued to Ryder Energy Distributing would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
11/8/94 .....	Richland Operations Office, Richland, Washington.	VPZ-0001	Request for Deposition. If granted: Benton County would be required to make five individuals available for deposition.
11/8/94 .....	Texaco/Ryder Energy Distributing, Hardin, Kentucky.	RR321-171	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The July 29, 1994 Decision and Order (Case No. RF321-14683) issued to Ryder Energy Distributing would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

**REFUND APPLICATIONS RECEIVED**

[Week of 11/7/94 Through 11/11/94]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/9/94 .....	American Blackline Coatings .....	RG272-1
11/8/94 .....	United L.P. Gas Corp .....	RF340-201
11/7/94 .....	P & T Texaco Service .....	RF321-21042
11/7/94 .....	Dick's Suburban Texaco .....	RF321-21043
11/8/94 .....	Texaco Utilities Co .....	RC272-265

[FR Doc. 95-3016 Filed 2-6-95; 8:45 am]

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**Notice of Issuance of Decisions and Orders; Week of October 17 Through October 21, 1994**

During the week of October 17 through October 21, 1994 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with

the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*Dale N. Treweek, 10/19/94, LFA-0423*

Dale N. Treweek filed an appeal from a partial denial of a request for information under the Freedom of Information Act issued by the DOE's Office of Engineering, Operations,

Security, and Transition Support (EOST). In response to the request, EOST released some documents and stated that it had found no further responsive documents. After Treweek filed the Appeal, he conducted discussions with representatives of the DOE that identified certain potentially responsive documents that had not been released. The DOE therefore granted the Appeal and remanded the case to EOST for further action.

*In Defense of Animals, 10/21/94, LFA-0424*

In Defense of Animals (IDA) filed an Appeal from determinations by the DOE's Freedom of Information (FOI) and Privacy Acts Branch and the Nevada Operations Office. In the determinations, these DOE offices stated that no documents could be found that were responsive to the Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the search for responsive documents was inadequate, and the Request was remanded to the FOI and Privacy Acts Branch for a further search. The DOE's Decision was based on the fact that DOE documents pertaining to IDA's request were mentioned in various publications. *Martha L. Powers, 10/17/94, LFA-0411*

Martha L. Powers filed an Appeal from a determination issued to her by the DOE's Nevada Operations Office (Nevada Operations) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that, with the information available to it, Nevada Operations conducted an adequate search for documents relating to George Egish, a civilian employee of the Army who may have photographed atmospheric atomic explosion tests during the 1940's and 1950's. After consulting with Mrs. Powers, Nevada Operations and various DOE offices, the DOE determined that the agency may be able to identify some responsive documents if she were to submit a new request with additional identifying information. Nevada Operations personnel indicated their willingness to work with Mrs. Powers to refine any new search request she might make. Accordingly, the Appeal was denied.

*Painters District Council No. 55, 10/18/94, LFA-0422*

Painters District Council No. 55 (PDC) filed an Appeal from a determination issued by the DOE's Bonneville Power Administration (BPA), which determination denied in part a Request for Information PDC submitted under the Freedom of Information Act (FOIA). PDC requested documents relating to BPA's procurement of a painting services contract, including all proposals, the final contract and documents generated by BPA in the course of the procurement process. BPA released redacted copies of the final contract, a document entitled "Document of Award Decision" (Decision), and the proposals (Proposals). However, BPA withheld the

"Best Buy Analysis" and the Analysis of Offers and portions of the Contract, Proposals and Decision pursuant to FOIA Exemptions 4 and 5. In its Appeal, PDC argued that BPA had improperly withheld that material and had failed to provide additional responsive documents. In considering the Appeal, the DOE determined that the unit prices and individual components of unit prices were properly withheld under Exemption 4. However, the DOE found that other portions of the Best Buy Analysis and the Proposals were improperly withheld under Exemption 4. Additionally, the DOE found that portions of the Decision and the Analysis of Offers were improperly withheld pursuant to Exemption 5. The DOE also found that BPA had made an adequate search in response to PDC's FOIA request. Consequently, the DOE granted the Appeal in part and remanded the matter to BPA for further action.

*U.A. Plumbers and Pipefitters Local 36, 10/17/94, LFA-0421*

U.A. Plumbers and Pipefitters Local 36 (Local 36) filed an Appeal from a determination issued to it on September 16, 1994, by the DOE's Idaho Operations Office. In that determination, the Authorizing Official denied a request for a waiver of fees in connection with a request filed by Local 36 under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as implemented by the DOE in 10 CFR Part 1004. The Authorizing Official advised Local 36 that the cost of processing its request would be approximately \$156,255. In its Appeal, Local 36 asked that the Office of Hearings and Appeals (OHA) reverse the initial determination, and grant it a fee waiver. In considering the Appeal, the OHA found that although disclosure of the requested information was in the commercial interest of Local 36, a partial reduction of fees was appropriate because the requested information will primarily benefit the general public. The OHA determined that it would be appropriate to reduce the charges assessed Local 36 by 75 percent. Therefore, the Appeal was granted in part.

**Requests for Exception**

*Brindley Oil Co., 10/21/94, LEE-0123*

Brindley Oil Company (Brindley) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was suffering a gross inequity and a serious hardship. The

DOE issued a final Decision and Order determining that the exception request should be granted.

*Carter Oil Company, 10/19/94, LEE-0100*

Carter Oil Company (Carter) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Carter did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

*Chambers Oil Company, 10/17/94, LEE-0116*

Chambers Oil Company (Chambers) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Chambers did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

*Ewing Oil Company, 10/17/94, LEE-0084*

Ewing Oil Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Ewing's request, the DOE found that the firm, which the EIA characterized as a "certainty firm" because of its significant market share, was not experiencing a serious hardship or a gross inequity. Accordingly, exception relief was denied.

*Petroleum Products, Inc., 10/17/94, LEE-0087*

Petroleum Products, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship, and denied Petroleum Product's Application for Exception.

*Texpar Energy, Inc., 10/18/94, LEE-0119*

Texpar Energy, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-782C, the "Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship, and denied Texpar's Application for Exception.

### Refund Applications

*Draper Energy Co., Inc., 10/18/94, RF272-92349*

The DOE issued a Decision and Order concerning the Application for Refund of a claimant in the Subpart V crude oil overcharge refund proceeding. The Application for Refund was based on purchases of gasoline and middle distillates the applicant purchased and resold during the crude oil price control refund period. The DOE determined that the applicant's sales of gasoline and middle distillates allowed it to pass on the costs of any crude oil overcharges to its customers. Therefore, the DOE concluded that the claimant was not injured by any of the crude oil overcharges associated with the gallons

that it purchased. Accordingly, the Application for Refund was denied.

*Gulf Oil Corporation/Huber's 4 Corners Store, 10/19/94, RF300-10925*

Huber's 4 Corners Store filed an Application for Refund in the Gulf Oil Corporation refund proceeding. Huber's requested a refund based on its indirect purchases of Gulf motor gasoline. The DOE noted that an indirect purchaser is not entitled to a refund where the direct purchaser demonstrates that it absorbed the alleged overcharges rather than passing them through to its customers. Because the direct purchaser had established that it absorbed the alleged Gulf overcharges, the DOE determined that Huber's was not entitled to a refund. Accordingly, the Application for Refund was denied.

*Texaco Inc./Loop's Airport Texaco, 10/17/94, RR321-167*

The DOE issued a Decision and Order partially granting a Motion for Reconsideration filed by Bert N. Loop on behalf of Loop's Airport Texaco. In his Motion, Mr. Loop asked that the DOE modify a Supplemental Order issued on July 20, 1994, *Texaco Inc./Loop's Airport Texaco*, 24 DOE ¶ 85,061 (1994), which ordered him to repay a portion of a refund that he had previously been granted in the Texaco

special refund proceeding. Mr. Loop requested that he not be required to pay interest on the excess amount of the refund between the date the refund was issued and the date of repayment. Mr. Loop also requested that he not be held responsible for that portion of the excessive refund that he paid to Federal Refunds, Inc. (FRI), the private company with whom he contracted to help him obtain his refund. In considering these requests, the DOE determined that it was partially responsible for the error that resulted in Mr. Loop's receiving an excessive refund, and it therefore decided that Mr. Loop would not be required to pay interest on the repayment. However, the DOE determined that since any agreement between FRI and Mr. Loop was a private matter between the two parties, it would not reduce his repayment obligation to the DOE.

### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Cox Construction Co. et al .....	RF272-86255	10/20/94
Dahlen Farmers Elevator & Oil Company et al .....	RF272-94775	10/20/94
Farmers Union Oil Co. of Minot .....	RF272-86878	10/21/94
Gulf Oil Corporation/O.S.T. & Kirby .....	RF300-20580	10/18/94
Westheimer & Kirby .....	RF300-20581	.....
Fannin Gulf .....	RF300-20582	.....
Spencer & Allen Genoa .....	RF300-20583	.....
Gulf Oil Corporation/Sylvester's Crill & Palm Ave. ....	RF300-21801	10/17/94
Sylvester's Crill & Palm Ave. ....	RF300-21802	.....
Sylvester's Crill & Palm Ave. ....	RF300-21803	.....
Sylvester's Crill & Palm Ave. ....	RF300-21804	.....
Lanford Flying Service et al .....	RF272-94809	10/20/94
Texaco Inc./Curtis Beard et al .....	RF321-14018	10/19/94
Texaco Inc./ Stewart's Texaco et al .....	RF321-20605	10/20/94
Village of Lyons et al .....	RF272-97204	10/17/94

**Dismissals**

The following submissions were dismissed:

Name	Case No.
14 Mile 7 Gratiot Service .....	RF321-21032
Clinchfield Railroad .....	RF272-93753
O/T/S/ Oil Co., Inc., .....	RF300-21719
William J. Miles .....	RF272-89769

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 30, 1995.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 95-3017 Filed 2-6-95; 8:45 am]

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### **Issuance of Decisions and Orders for the Week of November 21 Through November 25, 1994**

During the week of November 21 through November 25, 1994, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list

of submissions that were dismissed by the Office of Hearings and Appeals.

### **Requests for Exception**

*Applebee Oil & Profane, 11/22/94, LEE-0145*

Applebee Oil & Propane of Ovid, Michigan, filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On August 11, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Applebee Oil & Propane's Application for Exception.

*West-Pet., Inc., 11/22/94, LEE-0156*

West-Pet., Inc. of New Orleans, Louisiana filed an Application for Exception from the Energy Information (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On September 23, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and

Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Wes-Pet., Inc.'s Application for Exception.

### **Interlocutory Order**

*Richland Operations Office, 11/25/94, VPZ-0001*

The DOE's Richland Operations Office (Richland) filed a Request for Depositions (request) on November 14, 1994 with the Office of Hearing and Appeals (OHA). The request concerns an evidentiary hearing to be convened in connection with an appeal by Benton County, Washington of a determination issued by Richland denying the County's claim for Payment-Equal-To-Taxes (PETT) under the Nuclear Waste Policy Act of 1982, as amended. In the request, Richland asked that OHA order Benton County to make available for deposition five Benton County witnesses. On considering the request, OHA found that because the five witnesses in question possessed important technical knowledge, further pre-trial discovery was warranted. Accordingly, OHA granted the request.

### **Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Enron Corp./ Shelton Oil & Gas Co., Inc .....	RF340-137 .....	11/25/94
Henson's, Inc .....	RF340-181 .....	
Cedar Falls utilities .....	RF340-184 .....	
Fairfax Trucking Company et al .....	RF272-93369 .....	11/22/94
Gulf Oil Corporation/Helo's Gulf .....	RF300-20464 .....	11/25/94
Gulf Oil Corporation/Thibaut Oil Company .....	RF300-20184 .....	11/25/94
Sause Bros. Ocean Towing Co., Inc .....	RR272-183 .....	11/22/94
Texaco Inc./Jeremiah R. Downey Oil Corp. et al .....	RF321-6193 .....	11/22/94
Wecota Farmers Union Oil Co. et al .....	RF272-94981 .....	11/22/94

**Dismissals**

The following submissions were dismissed:

Name	Case No.
City of Norwalk .....	RF300-21735
Commonwealth/Cambridge Electric Co. ....	RF321-20759
Edmonds Arco Service .....	RF304-13498
Griffin Brothers, Inc .....	RF272-95021
Little America Refining Co. ....	RR195-4
Lizza Industries, Inc .....	RF272-77580
Meadow Gold Dairies, Inc ....	RF272-77135
Southside Texaco .....	RF321-20647

Name	Case No.
Stanley Contruction Co .....	RF272-97243
Todd Ash Arco .....	RF304-14934

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy

Guidelines, a commercially published loose leaf reporter system.

Dated: January 30, 1995.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

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### **Implementation of Special Refund Procedures**

**AGENCY:** Office of Hearings and Appeals, Department of Energy.